

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

PLANNED PARENTHOOD SOUTH ATLANTIC, <i>et al.</i> ,)	
)	
)	
Plaintiffs,)	
)	
v.)	
)	
JOSHUA STEIN, <i>et al.</i> ,)	Case No. 1:23-cv-00480-CCE-LPA
)	
Defendants,)	
)	
and)	
)	
PHILIP E. BERGER, <i>et al.</i> ,)	
)	
Intervenor-Defendants.)	

JOINT RULE 26(f) REPORT (LOCAL RULE 16.2)

1. Pursuant to Fed. R. Civ. P. 26(f) and LR16.1(b), a meeting was held by videoconference on September 11, 2023, and was attended by Jaclyn Maffetore for all Plaintiffs; by Hannah Swanson, Anjali Salvador, and Helene Krasnoff for Plaintiff Planned Parenthood South Atlantic; by Brigitte Amiri for Plaintiff Dr. Beverly Gray; by Sripriya Narasimhan and South Moore for Defendant Attorney General Joshua H. Stein; by Michael T. Wood for Defendant Secretary Kody H. Kinsley; by Elizabeth Curran O'Brien for Defendant District Attorneys Todd M. Williams, Spencer B. Merriweather III, Avery Crump, Jeff Nieman, Satana Deberry, William West, Lorrin Freeman, and Benjamin R. David; by Kevin Guy Williams for Defendant District Attorney Jim O'Neill; by Michael E. Bulleri for Defendants Michaux R. Kilpatrick, MD, PhD and Racquel Ingram, PhD, RN;

and by W. Ellis Boyle, Erin Hawley, and Julia Payne for Intervenor-Defendants Senator Philip E. Berger and Representative Timothy K. Moore.

2. Discovery Plan. The parties propose to the Court the following discovery plan:

Plaintiffs' amended motion for a preliminary injunction is set for hearing at 9:30 a.m. on September 25, 2023. This hearing was rescheduled from September 21, 2023, and now conflicts with the Local Rule 16.1 initial pretrial conference that is currently also scheduled for September 25, 2023.

Pursuant to the Court's July 6, 2023 Scheduling Order, the parties completed expedited discovery related to the preliminary injunction motion on September 6, 2023. During this expedited discovery period, Plaintiffs and Intervenor-Defendants exchanged written discovery requests and responses, produced documents, and conducted depositions of the four witnesses who submitted declarations in support of the preliminary injunction briefing.

The Court's July 6, 2023 Scheduling Order further provides that any additional discovery needed for dispositive motions or trial shall be concluded by January 31, 2024. However, the parties agree that the conducting of additional discovery should be postponed pending determination of the pending motion for a preliminary injunction, as that order will likely provide direction on what additional discovery, if any, is needed. Given that one of the challenged provisions is set to take effect October 1, 2023, and that the Court's Scheduling Orders provide for all briefing and argument to be completed by September 25,

2023, the parties anticipate that the Court will enter an order resolving the preliminary injunction motion before October 1, 2023.

The parties therefore respectfully propose that the Local Rule 16.1 initial pretrial conference be re-set for at least 30 days after entry of the Court's order resolving the pending amended motion for a preliminary injunction. The parties propose a minimum window of 30 days to allow time for interlocutory appeal from that order under Fed. R. App. P. 4(a)(1)(A). Concurrently with the filing of this report, the parties will file a joint motion proposing that the Local Rule 16.1 initial pretrial conference currently set for September 25, 2023 be moved in accordance with this proposed schedule.

In the interim, and subject to modification by agreement of the parties in light of the Court's resolution of the pending amended motion for a preliminary injunction, the parties agree that:

Additional discovery may be needed on the following subjects: expert testimony on topics such as the comparative safety of abortion and other medical procedures, the characteristics of North Carolina hospitals and licensed abortion clinics, and screening for and management of ectopic pregnancy.

Discovery shall be placed on a case-management track established in LR 26.1. The parties agree that the appropriate plan for this case is that designated in LR 26.1(a) as Complex.

The date for the completion of all discovery (general and expert) has been set by the Court for January 31, 2024. DE 37 at 3.

Stipulated modifications to the case management track include: the transcripts of depositions already taken in this matter shall remain part of the record, and the parties need not re-depose those witnesses as to matters already covered. Any further deposition of an already-deposed witness shall be limited to three hours. The number of discovery requests authorized by LR 26.1 shall be increased to 35, and then reduced by the number of any discovery requests already exchanged.

The parties agree to exchange reports required by Rule 26(a)(2)(B) and disclosures required by Rule 26(a)(2)(C) according to the following schedule:

- Plaintiffs' reports and disclosures due November 13, 2023.
- Defendants' and Intervenor-Defendants' reports and disclosures due December 11, 2023.
- Plaintiffs' rebuttal reports and disclosures, if any, due January 8, 2023.

Supplementations will be as provided in Rule 26(e) or as otherwise ordered by the court.

3. Mediation. Given the claims in this case and the procedural posture, the parties agree that this case is not a good candidate for negotiated resolution.

4. Preliminary Deposition Schedule. The parties previously agreed to and completed the following deposition schedule:

- August 29, 2023: Dr. Christy M. Boraas Alsleben
- August 30, 2023: Dr. Monique Chireau Wubbenhorst
- August 31, 2023: Dr. Susan Bane

- September 1, 2023: Dr. Katherine Farris

The parties will confer regarding a schedule for any further or supplemental depositions upon the re-commencement of discovery.

5. Other items.

Plaintiffs should be allowed until November 13, 2023, to request leave to join additional parties or amend pleadings.

Defendants and Intervenor-Defendants should be allowed until December 11, 2023 to request leave to join additional parties or amend pleadings.

After these dates, the Court will consider, *inter alia*, whether the granting of leave to join additional parties or amend pleadings would delay trial.

The parties have discussed special procedures for managing this case, including reference of the case to a Magistrate Judge on consent of the parties under 28 U.S.C. § 636(c), or appointment of a master. The parties do not consent to trial before a Magistrate Judge under 28 U.S.C. § 636(c).

Trial of the action is expected to take approximately 2–3 days. A jury trial has not been demanded.

The parties discussed whether the case will involve the possibility of confidential or sealed documents. Because written discovery during the expedited discovery period involved the disclosure of confidential and proprietary materials, the parties have entered into a joint protective agreement and addendum governing the confidentiality of certain documents exchanged during discovery.

This case may involve confidential or sealed documents and the parties have separately filed a LR 5.5 Report.

Date: September 15, 2023

Respectfully submitted,

FOR ALL PLAINTIFFS:

/s/ Kristi Graunke

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CERTIFICATE OF SERVICE

I hereby certify that, on September 15, 2023, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which served notice of this electronic filing to all counsel of record.

/s/ Hannah Swanson

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**Special appearance filed*